Supreme Court of Maine.

JACKSON *vs.* THE Y. & C. RAILROAD COMPANY.

Without some statutory provision, no action can be maintained in the name of an assignee, upon interest coupons, which contain no negotiable words, nor language from which it can be inferred, that it was the design of the corporation issuing them, to treat them as negotiable paper, or as creating an obligation distinct from, and independent of, the bonds to which they were severally attached when the bonds were issued.

The negotiability of such coupons is a question of law, to be determined, from the papers themselves, by fixed and well-settled rules; and proof of custom, as to the negotiability of them, is inadmissible.

The bonds being specialties, the remedy for breaches thereof, is by an action, not of assumpsit, but of debt or of covenant broken; not being *legally* assignable, no action is maintainable in the name of the holder, though he be assignee. GOODENOW, J., dissenting.

It is indispensable to its maintenance that the cause of action exist at the time the action was commenced. The statute of 1856, c. 248, does not remedy this defect.

This case was reported in full in the August number of the LAW REGISTER, p. 585, to which we refer the reader. In the following supplemental note, several decisions of great interest and importance are added.

ADDENDUM.—Since preparing the note to the above case, we have discovered a considerable number of cases bearing upon the questions before discussed, of the existence of which we either were not aware, or else the fact had escaped present recollection. In Beaver Co. *vs.* Armstrong, Sup. Ct. Penna., February 1863, a learned and elaborate decision was delivered by Mr. Justice READ, in which the cases bearing upon the question were thoroughly reviewed, and the conclusion arrived at, that the coupons of railroad bonds are negotiable instruments, and may be sued by the holder separate from the bonds, and interest recovered from the date of the demand and refusal. This very point was also decided in Knox Co. *vs.* Aspinwall, 21 How. U. S. R. 539; and seems to have been recognised in Zabriskie *vs.* C. C. & C. Railway, 23 How. U. S. R. 381, 400. This affords very satisfactory confirmation of the views already expressed by us, and can scarcely fail to convince the Court in Maine, that the present weight of American authority is very decidedly in favor of the views maintained by Mr. Justice GOODENOW.

I. F. R.